

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HENRY HARPER

Petitioner,

ORDER

-against-

06-CV-485 (NGG)(JMA)

BRIAN FISCHER, Superintendent

Respondent.

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GARAUFIS, District Judge.

By letter dated May 26, 2006, *pro se* petitioner Henry Harper requested that his petition for a writ of habeas corpus be held in abeyance pending state court consideration of an application for a writ of coram nobis, in order for petitioner to exhaust his state remedies prior to a decision regarding his application for a writ of habeas corpus. (Pet.'s Ltr. Ct., dated May 26, 2006.) In his request, the petitioner did not specify which claims he sought to exhaust, nor did the petitioner explain why he failed to exhaust his state court remedies prior to filing his habeas petition. The Government responded, opposing the request for a stay and abeyance on the ground that having failed to provide a statement of the claim(s) that petitioner seeks to exhaust and his good faith basis for not exhausting them before the filing of this petition. (Mem. Opp. Pet., at 40-41.)

I hereby instruct the petitioner to file an affirmation within thirty days setting forth the claims he seeks to exhaust and showing good cause for his failure to first exhaust his claims in state court. See Rhines v. Weber, 544 U.S. 269, 277, 125 S.Ct. 1528, 1535 (2005) (“stay and abeyance is only appropriate when the district court determines there was good cause

for the petitioner's failure to exhaust his claims first in state court"). **If the petitioner does not file an affirmation within thirty days, I shall deny his motion for a stay and abeyance of the habeas corpus proceeding.**

SO ORDERED.

Dated: June 12, 2006
Brooklyn, N.Y.

/s/ Nicholas G. Garaufis
Nicholas G. Garaufis
United States District Judge